

SECOND REGULAR SESSION

# SENATE BILL NO. 1173

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR YECKEL.

Read 1st time February 18, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4774S.011

## AN ACT

To repeal sections 32.052 and 143.183, RSMo, relating to income tax revenues from nonresidents, and to enact in lieu thereof two new sections relating to the same subject.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 32.052 and 143.183, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 32.052 and 143.183, to read as follows:

32.052. 1. The provisions of this section shall apply to the following: employer withholding tax as provided in **section 143.183, RSMo, and** sections 143.191 to 143.265, RSMo, and sales and use tax, including local sales taxes, as provided in chapter 144, RSMo.

2. If the director of revenue determines that any person required to collect, account for, and pay over any tax described in subsection 1 of this section has, at the time and in the manner prescribed by law or regulations, failed to collect, truthfully account for, or pay over any such tax, the director may notify such person in accordance with subsection 4 of this section and such person shall:

(1) Collect, at the times and in the manner provided by law and regulations, all of the taxes described in subsection 1 of this section which become collectible [by him] after receipt of such notice;

(2) Deposit the taxes so collected, not later than the end of the second business day after collection, with a financial institution approved by the director of revenue, in a separate account established in accordance with subsection 3 of this section; and

(3) Keep in such account the taxes so deposited until payment thereof is made to the state of Missouri as required by the law and regulations in respect to such taxes.

3. The separate account referred to in subsection 2 of this section shall be established

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

under the designation, "(Name of person required to establish account), Trustee, Special Fund in Trust for the State of Missouri under Chapter 32, RSMo". The taxes deposited in such account shall constitute a fund in trust for the state of Missouri payable only to the director of revenue on demand of the trustee. At no time shall the amount of funds so deposited in such account exceed the maximum federally insured limit. It shall be the duty of such person upon whom such notice is served to notify the director of revenue in writing the name and address of the financial institution wherein such account is proposed to be kept.

4. Notice to any person requiring [his] compliance with [the provisions of] this section shall be in writing and shall be hand delivered by the director of revenue or sent by certified mail to the last mailing address provided by the taxpayer.

5. The director of revenue may relieve a person from the requirement to comply with [the provisions of] this section whenever [he] **the director** is satisfied that such person will comply with the tax laws of this state. Such notice of cancellation shall be made in writing and shall take effect at such time as is specified in the written notice of cancellation.

6. Failure to comply with use of the trust account as required by this section shall be presumed to be a willful failure to truthfully account for and pay over the tax with intent to defraud.

143.183. 1. As used in this section, the following terms mean:

(1) "Nonresident entertainer", a person residing or registered as a corporation outside this state who, for compensation, performs any vocal, instrumental, musical, comedy, dramatic, dance or other performance in this state before a live audience and any other person traveling with and performing services on behalf of a nonresident entertainer, including a nonresident entertainer who is paid compensation for providing entertainment as an independent contractor, a partnership that is paid compensation for entertainment provided by nonresident entertainers, a corporation that is paid compensation for entertainment provided by nonresident entertainers, or any other entity that is paid compensation for entertainment provided by nonresident entertainers;

(2) "Nonresident member of a professional athletic team", a member of a professional athletic team residing outside this state, including any active player, any player on the disabled list if such player is in uniform on the day of the game at the site of the game, and any other person traveling with and performing services on behalf of a professional athletic team;

(3) "Personal service income" includes exhibition and regular season salaries and wages, guaranteed payments, strike benefits, deferred payments, severance pay, bonuses, and any other type of compensation paid to the nonresident entertainer or nonresident member of a professional athletic team, but does not include prizes, bonuses or incentive money received from competition in a livestock, equine or rodeo performance, exhibition or show;

(4) "Professional athletic team" includes, but is not limited to, any professional baseball,

basketball, football, soccer and hockey team.

2. Any person, **venue**, or entity who pays compensation to a nonresident entertainer shall deduct and withhold from such compensation as a prepayment of tax, an amount equal to two percent of the total compensation paid to the nonresident entertainer.

3. Any person, **venue**, or entity required to deduct and withhold tax pursuant to subsection 2 of this section, shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, remit the taxes withheld in such form or return as prescribed by the director of revenue and pay over to the director of revenue or to a depository designated by the director of revenue the taxes so required to be deducted and withheld.

**4. Any person, venue, or entity subject to this section shall be considered an employer for purposes of section 143.191, and shall be subject to all penalties, interest, and additions to tax provided in this chapter for failure to comply with this section.**

[4.] **5.** Notwithstanding other provisions of this chapter to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but none after December 31, 2008, shall annually estimate the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of nine years, sixty percent of the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri arts council trust fund, and shall be transferred, subject to appropriation, from the general revenue fund to the Missouri arts council trust fund established in section 185.100, RSMo, and any amount transferred shall be in addition to such agency's budget base for each fiscal year. Notwithstanding other provisions of this section, the Missouri arts council shall not be appropriated more than ten million dollars in any fiscal year. The director shall by rule establish the method of determining the portion of personal service income of such persons that is allocable to Missouri.

[5.] **6.** Notwithstanding the provisions of sections 186.050 to 186.067, RSMo, to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but for none after December 31, 2008, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of nine years, ten percent of the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri humanities council trust fund, and shall be transferred, subject to appropriation, from the general revenue fund to the Missouri humanities council trust fund established in section 186.055, RSMo, and any amount transferred shall be in addition to

such agency's budget base for each fiscal year.

[6.] **7.** Notwithstanding other provisions of section 182.812, RSMo, to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but for none after December 31, 2008, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of nine years, ten percent of the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri state library networking fund, and shall be transferred, subject to appropriation, from the general revenue fund to the secretary of state for distribution to public libraries for acquisition of library materials as established in section 182.812, RSMo, and any amount transferred shall be in addition to such agency's budget base for each fiscal year.

[7.] **8.** Notwithstanding other provisions of section 37.200, RSMo, to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but for none after December 31, 2008, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of nine years, ten percent of the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri public television broadcasting corporation special fund, and shall be transferred, subject to appropriation, from the general revenue fund to the Missouri public television broadcasting corporation special fund established in section 37.200, RSMo, and any amount transferred shall be in addition to such agency's budget base for each fiscal year; provided, however, that twenty-five percent of such allocation shall be used for grants to public radio stations which were qualified by the corporation for public broadcasting as of November 1, 1996. Such grants shall be distributed to each of such public radio stations in this state after receipt of the station's certification of operating and programming expenses for the prior fiscal year. Certification shall consist of the most recent fiscal year financial statement submitted by a station to the corporation for public broadcasting. The grants shall be divided into two categories, an annual basic service grant and an operating grant. The basic service grant shall be equal to thirty-five percent of the total amount and shall be divided equally among the public radio stations receiving grants. The remaining amount shall be distributed as an operating grant to the stations on the basis of the proportion that the total operating expenses of the individual station in the prior fiscal year bears to the aggregate total of operating expenses for the same fiscal year for all Missouri public radio stations which are receiving grants.

[8.] **9.** Notwithstanding other provisions of section 253.402, RSMo, to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but

for none after December 31, 2008, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of nine years, ten percent of the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri department of natural resources Missouri historic preservation revolving fund, and shall be transferred, subject to appropriation, from the general revenue fund to the Missouri department of natural resources Missouri historic preservation revolving fund established in section 253.402, RSMo, and any amount transferred shall be in addition to such agency's budget base for each fiscal year. As authorized pursuant to subsection 2 of section 30.953, RSMo, it is the intention and desire of the general assembly that the state treasurer convey, to the Missouri investment trust on January 1, 1999, up to one hundred percent of the balances of the Missouri arts council trust fund established pursuant to section 185.100, RSMo, and the Missouri humanities council trust fund established pursuant to section 186.055, RSMo. The funds shall be reconveyed to the state treasurer by the investment trust as follows: the Missouri arts council trust fund, on January 2, 2009; and the Missouri humanities council trust fund, on January 2, 2009.

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